Supreme Court, U. S.
FILED
JAN 10 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1924

JAMES R. MUNIZ, ET AL.,

Petitioners,

v.

ROY O. HOFFMAN, Director, Region 20, National Labor Relations Board.

BRIEF FOR THE UNIONS *AMICI CURIAE*

FRANK J. DONNER
ROBERT Z. LEWIS
JAMES G. MAURO, JR.
11 East 51st Street
New York, New York 10022
Attorneys for United Electrical, Radio and Machine Workers of America (UE), *as Amicus Curiae*

WINN NEWMAN
RUTH WEYAND
1126 16th Street, N.W.
Washington, D.C. 20036
Attorneys for International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, *as Amicus Curiae*

HAROLD I. CAMMER
9 East 40th Street
New York, N.Y. 10016
Attorney for Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, *as Amicus Curiae*

NORMAN LEONARD
1182 Market Street
San Francisco, California 94102
Attorney for International Longshoremen and Warehousemen's Union, *as Amicus Curiae*

JOHN RATCLIFF
MARTHA BERGMARK
ELLIOTT ANDALMAN
224 Second Avenue
Hattiesburg, Miss. 39401
Attorneys for Gulf Coast Pulpwood Association, *as Amicus Curiae*

EUGENE G. EISNER
351 Broadway
New York, N.Y. 10013
Attorney for District 65, Distributive Workers of America, *as Amicus Curiae*

I. PHILIP SIPSER
380 Madison Avenue
New York, N.Y. 10017
Attorney for Local 1199, Drug and Hospital Employees Union, *as Amicus Curiae*

COHEN, GLICKSTEIN, LURIE, OSTRIN AND LUBELL
1370 Avenue of the Americas
New York, N.Y. 10019
Attorneys for Newspaper Guild of New York, Local 3, AFL-CIO, and Local 306, Moving Picture Machine Operators Union, IATSE, AFL-CIO
as Amici Curiae

INDEX

	PAGE
Interest of Amici Curiae	1
Issue Presented	2
ARGUMENT:	
I	3
II	5
III	7
IV	9
CONCLUSION	12

Authorities Cited

CASES:	
Bloom v. United States, 391 U.S. 194 (1968)	10, 11
Boys Market v. Retail Clerks' Union, 398 U.S. 235 (1970)	5
Duncan v. Louisiana, 391 U.S. 145 (1968)	5, 9, 10
Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968)	10
Frank v. United States, 395 U.S. 147 (1969)	9, 10
Hoffman v. ILWU, Local 10, 492 F.2d 929 (9th Cir. 1974)	11
Michaelson v. United States, 266 U.S. 42 (1924)	7
Union Nacional de Trabajadores, 502 F.2d 113 (1st Cir. 1974)	8, 9
United States v. Hutcheson, 312 U.S. 219 (1941)	5, 8
Williams v. Florida, 399 U.S. 78 (1970)	5

PAGE

Constitutional Provisions and Statutes

Constitution of the United States, Sixth Amendment 2, 10

United States Code, Crimes and Criminal Procedure:

18 U.S.C. Sec. 1 ..... 10, 11

18 U.S.C. Sec. 3692 .....2, 6, 7, 8, 9

United States Code, Labor Management Relations Act:

29 U.S.C. Sec. 102 6

29 U.S.C. Sec. 113 6

29 U.S.C. Sec. 151 6

29 U.S.C. Sec. 152 ..... 1, 6, 8

29 U.S.C. Sec. 160 (j) and (l) 6, 7, 8

Miscellaneous

American Bar Association Proceedings, 49 A.B.A. Rev. 174 (1923) 4

Report of United States Commission on Industrial Relations (1915) 3

Report of Senate Judiciary Committee (70th Cong., 1st Session, 1928) 4

Trial by Judge and Jury, 33 Am. Law Rev. 1899 .. 4

105 Congressional Record 6730 (1959) 8

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1924

JAMES R. MUNIZ, *et al.*,

Petitioners,

v.

ROY O. HOFFMAN, Director, Region 20, National Labor Relations Board.

BRIEF FOR THE UNIONS *AMICI CURIAE*

Interest of *Amici Curiae*

The *amici curiae* all are labor organizations as defined by the National Labor Relations Act as amended, 29 U.S.C.A. Sec. 152, and together represent approximately one million workers.

The United Electrical, Radio and Machine Workers of America (UE) and the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC are international labor organizations composed of employees of manufacturers of electronics products and equipment, electrical machinery, appliances and products, machine tools and allied products throughout the United States. The Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO is an international labor organization, composed of employees of manufacturers in the meat-processing industry all over the country. The International Longshoremen and Warehousemens Union, an international labor union, represents warehouse and longshore emloyees in California, Oregon, Washington, Alaska and Hawaii.

The Gulf Coast Pulpwood Association is composed of pulpwood cutters working in Mississippi, Alabama and Florida.

District 65, Distributive Workers of America, represents warehouse, office and processing workers; Local 1199, Drug & Hospital Employees Union, affiliated with the National Union of Hospital and Health Care Employees, AFL-CIO, represents workers in hospital and health care facilities; the Newspaper Guild of New York, Local 306, Moving Picture Machine Operators Union, mercial maintenance, advertising and sales employees of all major newspapers, magazines and other publications; Local 306, Moving Picture Machine Operaators Union, IATSE, AFL-CIO represents projectionists and technicians in theatre chains, local theatres, hotels, educational institutions and airlines. The employees represented by these four last-named unions all are employed in the New York metropolitan area and together number approximately one hundred thousand.

These unions view the decision of the court below as harmful to the interests of their members. They consider that decision an impairment of the right to trial by jury, and especially serious because of its impact on labor disputes.

Issue Presented

May the petitioners, a labor organization and officers thereof, be denied the right of trial by jury when they are charged with criminal contempt for allegedly violating an injunction prohibiting picketing activity in the face of the mandate of the Sixth Amendment to the Constitution of the United States and Section 3962 of Title 18 of the United States Code of Crimes and Criminal Procedure?

ARGUMENT

I.

The *amici* have sought to present argument in this case because the particular issue presented is of vital importance to the working people they represent. It may fairly be said that the right to trial by jury in the context of a labor dispute is a cherished one written into the law after years of bitter struggle. It should not be eroded or denied to working people without the most explicit indication that Congress intended to withhold it.

We need to recall that the attack on the use of the judiciary as an instrument of control of labor disputes was not confined to the *ex parte* issuance of injunctions. A coordinate and possibly more important grievance was the resort to summary contempt. As a result of both of these abuses, working people came to view the judges as partisans of employers and the entire equity procedure which resulted in summary contempt as an illegitimate mode of governance of labor disputes.

This bitterness and anger come through in the Proceedings and Report of the United States Commission on Industrial Relations (1915). For example, S.S. Gregory, a former president of the American Bar Association, testified (at p. 53), that the denial of a jury trial in contempt cases "has been an injustice that has rankled in the minds of everybody . . . and justly so." In the same way, Judge Walter Clark, a highly respected Chief Justice of the Supreme Court of North Carolina, testified that the effect of the injunction system had been "to irritate the men because they feel that every man has a right to a trial by jury, and that to take him up and compel him to be tried by a judge is not in accordance with the principles of equality, liberty and justice." He added that this form of summary justice had been one of the causes of social unrest

in the United States and would increase such unrest unless remedied. In a speech before the American Bar Association Senator Pepper of Pennsylvania said:

> "To the striker it seems like tyranny to find such vast power exercised—not by a jury of one's neighbors—but by a single official who is not elected but appointed, and that for life."
>
> —49 A.B.A. Rep. 174, 177.

An attorney familiar with the problems of working people testified before the Senate Judiciary Committee (70th Cong, 1st Sess., 1928, at p. 159):

> "Now, this contempt feature, of course, is the real power back of the injunctions because it is a power that is exercised by a single individual . . . Above all else, the person determining the contempt is the very person whose order has been disobeyed. That seems to me to be intrinsically an anti-social position for any man to be in. He lays down the order and naturally his pride is more hurt than anybody else on earth if his own order is disobeyed."

In a speech which inspired widespread reaction at the time, Judge Henry Clay Caldwell said of contempt punishments in labor disputes:

> "In proceedings for contempt for an alleged violation of the injunction, the judge is the lawmaker, the injured party, the prosecutor, the judge and the jury. It is not surprising that uniting in himself all these characteristics he is commonly able to obtain a conviction."
>
> —"Trial by Judge and Jury," 33 Am. Law Rev. 1899, pp. 321, 327, 328.

The background of protest against summary contempt sanctions is unified by a pervasive sense that such punishment was "class justice" because it denied its victims peer judgment. It might be said that speed required *ex parte* intervention, but no such justification could support summary punishment. The objection to the mode of punishment, it is fair to say, had, and indeed still has, a broader civic thrust than to the summary issuance of the injunction. This is reflected both in the legislative history of the Norris-LaGuardia Act detailed by the petitioner and in the fact that statutory therapy is separately provided for in Section 1.

Finally, the courts have recognized, with growing insistence, that the jury is a primary bulwark against precisely the sort of arbitrary action which gave rise to the guarantee of jury trials in contempt proceedings involving labor disputes. See *Duncan* v. *Louisiana*, 391 U.S. 145, 156 (1968); *Williams* v. *Florida*, 399 U.S. 78, 100 (1970).

II.

It is now no longer open to question that Congressional legislation dealing with labor, labor disputes, the right to collective bargaining and other forms of concerted activities and mutual aid which arise out of the modern industrial process are not to be read separately or discreetly, one measure in isolation from a predecessor or successor. In the course of regulating disputes Congress has fashioned what may be properly called a labor code. Each statute must be read if at all possible so as to harmonize with other legislation covering adjoining ground so that a coherent structure emerges with each part in either a supporting or re-enforcing role. *United States* v. *Hutcheson*, 312 U.S. 219 (1941); *Boys Market* v. *Retail Clerks' Union*, 398 U.S. 235 (1970).

It is hardly necessary to strain in order to forge such a linkage between the Norris-LaGuardia Act and the National Labor Relations Act as amended. It will not do to

say that the earlier statute deals with private rights and the later one with public rights. They both seek to protect the very same interests. Section 102 of the Norris-LaGuardia Act expressly states the Congressional policy which the Act implements as the protection of freedom of association, self-organization, free choice of bargaining representatives, and freedom to negotiate the terms and conditions of employment. In addition, the Act was intended to shield "other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .". In the same way, the findings and declaration of policy in the National Labor Relations Act as amended (29 U.S.C. 151), protects precisely the same range of employee interests.

Similarly, the most important single operative term in both laws is the definition of a labor dispute. A comparison of 29 U.S.C. 152 (9) with 29 U.S.C. 113(c) makes it clear that the labor statute lifted this operative definition from the earlier one. Moreover, not only are these two provisions to be read in *pari materia,* but it is clear that if the facts of a case establish a labor dispute within the meaning of the Norris-LaGuardia Act, they also spell out a labor dispute within the meaning of Section 152.

The question before the Court, whether 18 U.S.C. 3692 preserved the right of trial by jury in contempt cases arising from labor disputes, and insulated it from the reach of Section 10 of the National Labor Relations Act, as amended, is illuminuted by two additional considerations. The primary purpose of 10(h) is considerably narrower than the broad language used in the 1947 10(j) and (l) provisions. That purpose was merely to avoid the delay occasioned by lengthy hearings and litigation. They embody the determination of Congress that unfair labor practices may give rise or tend to give rise to such serious and unjustifiable interruptions to commerce as to require their discontinuance pending the Board's adjudication on the merits, to avoid irreparable injury to the policies of

the Act and frustration of the statutory purpose which otherwise would result. The injunctive relief contemplated is interlocutory to the final disposition of the unfair labor practice matters pending before the Board and is limited to such time as may expire before the Board tenders its final decision.

But to accord Respondents in 10(j) and 10(l) cases the right to a jury trial in contempt proceedings would not frustrate the purpose of speedy adjudication. Moreover, the injunctive process is not seamless or unitary. The application for and granting of an injunction is an altogether separate proceeding from a contempt action for its alleged violation. See *Michaelson* v. *United States,* 266 U.S. 42 (1924). This is seen most clearly by the fact that the contempt provisions of the Norris-LaGuardia Act was separated from the other portions of the statute and recodified in 18 U.S.C. 3692, to which we now turn.

III.

When the Taft-Hartley Act was passed in 1947 it raised a storm of objections among labor people. It was the first statute since the passage of the Norris-LaGuardia Act which revived the abuse of the labor injunction against unions. For the first time in fifteen years district courts were authorized to issue injunctions at the instance of the Labor Board against labor unions under Sections 10(j) and (l) of the Taft-Hartley Act.

In 1948 Congress removed the summary contempt provisions of the Act and incorporated them in a blanket provision, Title 18, Section 3692. This new enactment provides in pertinent part as follows:

> "In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial

by an impartial jury of the State and district wherein the contempt shall have been committed."

On the face of it, this statute governs injunctions of the kind here in issue. This is clearly a case of alleged contempt which arises under the laws of the United States governing the issuance of injunctions in labor disputes. The 1948 enactment, passed one year after the Taft-Hartley measure expressly covers Taft-Hartley injunctions, for Sections 10(j) and (l) incontestably are laws governing the issuance of injunctions in labor disputes. Indeed the Taft Hartley Act explicitly defines "labor dispute" in the most comprehensive language. The legislative history of the 1959 Landrum-Griffin Act reenforces this reading of Section 3692. See 105 Cong. Rec. 6730 (1959).

In view of the fact that, as we have shown, the abuse of summary contempt in labor disputes has a long genealogy of substance, the protests of labor unions against the revival of this abuse in the Taft-Hartley Act, the need to give the two statutes a harmonizing reading, the lack of necessity for retention of summary contempt trials to effectuate the purposes of Sections 10(j) and 10(l), and the absence of any functional link between the injunctive and the contempt aspects, why is it proper to construe Section 3692 so as to violate its literal meaning? As the Court has said in related context, "Such legislation must not be read in a spirit of mutilating narrowness." *United States* v. *Hutcheson, supra,* at p. 235.

Finally, we submit that to read an exception into the inclusive language of Section 3692 on the filmy evidence offered by respondent would trivialize the Sixth Amendment of the Constitution.

The contentions we press here are well summarized by the Court of Appeals for the First Circuit in *Union Nacional de Trabajadores, et al.,* 502 F.2d 113, 121 (1974):

> "Our conclusion, that Sec. 3692 requires criminal contempt proceedings stemming from alleged violations of a NLRA injunction to be tried before a jury is, we feel, an appropriate accommodation of the policies which inform the NLRA and Sec. 3692. It leaves the Board full power to request temporary relief and, in the event of noncompliance, to coerce obedience through civil contempt proceedings, without delay or interposition of a jury. But it also leaves available, for the rare case when punitive measures are after the fact, deemed necessary, the historic protection of a jury trial."

IV.

The restrictive reading of the statute urged by respondent would confront this Court with an immediate issue of due process: whether Petitioners' rights to a jury trial were improperly curtailed. We are thus required to examine whether the nature of the charges and punishment entitle the petitioners, wholly apart from the statute, to the protection of a jury trial. The Court has held that where a defendant has been charged with committing a serious criminal contempt, the Sixth Amendment's guarantee of trial by jury applies.

The Court has held that wherever possible the test of the applicability of the Sixth Amendment protection falls on "objective indications of the seriousness with which society regards an offense." *Frank* v. *United States,* 395 U.S. 147 (1969). The Court has further ruled that the most important criterion in a conventional contempt case is the severity of the maximum authorized penalty rather than the penalty actually imposed. See, for example, *Duncan* v. *Louisiana, supra.* Similarly, where the maximum penalty for criminal contempt is prescribed by statute, the Court must look to the statutory authorization for the purpose of determining whether the contempt was a serious offense entitling the alleged contemnor to a jury

trial. *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. 216 (1968). Congress has indicated in 18 U.S.C. Sec. 1(3) that a fine in excess of $500 is a punishment for an offense not "petty" in character. But even without reference to 18 U.S.C. Sec. 1, we submit that the long and shameful history of summary contempt in labor disputes, and indeed, the fact that Congress saw fit to apply legislative therapy to this abuse, are in themselves conclusive and "objective indications of the seriousness with which society regards [the offense]." See *Frank* v. *United States*, *supra*.

It is hardly necessary to insist that a prosecution for criminal contempt places the alleged offender in serious jeopardy because what is basically involved is the authority of the Court. By denying the right to a jury trial in any case of criminal contempt, the Court is sitting in judgment on its own actions and is peculiarly subject to those human pulls and pressures which create the danger of arbitrary action. This danger was well expressed in *Bloom* v. *United States*, 391 U.S. 194, 202 (1968):

> "Indeed, in contempt cases an even more compelling argument can be made for providing a right to jury trial as a protection against the arbitrary exercise of official power. Contemptuous conduct, though a public wrong, often strikes at the most vulnerable and human qualities of a judge's temperament. Even when the contempt is not a direct insult to the court of the judge, it frequently represents a rejection of judicial authority, or an interference with the judicial process or with the duties of officers of the court."

If the Sixth Amendment's guarantee of trial by jury truly does reflect a "reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges," *Duncan* v. *Louisiana*, *supra*, there is no case more appropriate for the invocation of that guarantee than a prosecution for criminal contempt.

This is particularly so, since it is now recognized that submitting contempt cases to juries will not "handicap the effective functioning of the courts." *Bloom* v. *Illinois*, *supra*. The constitutional right of trial by jury, it is submitted, should extend to all cases of criminal contempt.

A federal court is not free to fix on its own the point in the penal spectrum at which the constitutional right to a jury trial is activated. The Congressional statute must govern. Title 18 U.S.C. Sec. 1(3) draws the line which separates petty and serious offenses—six months' imprisonment, $500 fine or both. It will not do to say that its fixed character makes it arbitrary—that is true of every fixed standard. Nor that what may be "serious" for one contemnor may be a wrist-pat for another. It means little to assure a defendant in a serious criminal case that he is entitled to a trial by jury, to recognize that in criminal contempt cases the hazard of arbitrary action strengthens the claim to a jury trial and then, as here, to permit a court to decide *ex cathedra* that the punishment, a $25,000 fine, was not serious enough because it "might have no deterrent or punitive effect at all." *Hoffman* v. *ILWU Local 10*, 492 F.2d 936. But if the line is to be redrawn at some other point, or if a distinction is to be made between unions as entities and their members, a court whose powers are directly involved should hardly be entrusted with such responsibilities.

CONCLUSION

For all of the above reasons this Court should reverse the decision below and rule that Petitioners are entitled to a jury trial.

Dated: January 9, 1975

Respectfully submitted,

FRANK J. DONNER
ROBERT Z. LEWIS
JAMES G. MAURO, JR.
11 East 51st Street
New York, N.Y. 10022

WINN NEWMAN
RUTH WEYAND
1126 16th Street, N.W.
Washington, D.C. 20036

HAROLD I. CAMMER
9 East 40th Street
New York, N.Y. 10016

NORMAN LEONARD
1182 Market Street
San Francisco, California 94102

JOHN G. RATCLIFF
MARTHA BERGMAN
ELLIOTT ANDALMAN
224 Second Avenue
Hattiesburg, Miss. 39401

EUGENE G. EISNER
351 Broadway
New York, N.Y. 10013

I. PHILIP SIPSER
380 Madison Avenue
New York, N.Y. 10017

COHEN, GLICKSTEIN, LURIE, OSTRIN AND LUBELL
1370 Avenue of the Americas
New York, N.Y. 10019
Attorneys for Amici Curiae